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BIRCH STEWART KOLASCH & BIRCH		EXAMINER		
PO BOX 747		WARE, DEBORAH K		
FALLS CHURCH, VA 22040-0747		ART UNIT	PAPER NUMBER	
		1651		
		NOTIFICATION DATE		DELIVERY MODE
		01/08/2009		ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No. 10/582,166	Applicant(s) PARK ET AL.
	Examiner DEBBIE K. WARE	Art Unit 1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 01 October 2008.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application
6) Other: _____

DETAILED ACTION

Claims 1-3 are presented for reconsideration on the merits.

Response to Amendment

The amendment filed October 1, 2008, has been received and entered. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on June 8, 2006 and November 8, 2007 were filed and received. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-3 rendered vague and indefinite for failing to recite a biologically pure microorganism because it is unclear that the microorganism as claimed has been purified by the hand of man.

Response to Arguments

Applicant's arguments filed October 1, 2008, have been fully considered but they are not persuasive. The argument that the claims are newly amended to recite 'isolated microorganism" and that this amendment overcomes the rejection is noted. However, the terminology does not render the claims definite because it remains unclear that such isolation has taken place by the hand of man. It is more clear to recite in the claims "a biologically pure microorganism" and such language is suggested for use in the claims in place of "isolated microorganism". This rejection is further supported by the claim 3 wherein it is unclear that the microorganism as claimed has been purified by the hand of man, such as in a culture medium. Applicants should also note that claim 3 requires no culturing per se, and hence without such biologically pure culture how will a method of producing 5'-xanthyllic acid be carried out? Therefore, the rejection is sustained.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Korean Patent Abstract 1020010089980 A, (Abstract), cited on enclosed PTO-1449 Form.

Claims are drawn to *Corynebacterium ammoniagenes* mutant and can produce 5-xanthyllic acid.

Abstract teaches *Corynebacterium ammoniagenes* mutant and can produce 5-xanthyllic acid.

The mutant strain is identical and will inherently have resistance to 5-fluorotryptophan because of its superiority to other strains and for its production of 5-xanthyllic acid, as disclosed by the reference.

The claim is identical to the cited disclosure and is, therefore, considered to be anticipated by the teachings of the cited reference.

Response to Arguments

Applicant's arguments filed October 1, 2008, have been fully considered but they are not persuasive. The argument that the microorganism of the present invention is characterized by having a resistance to 5-fluorotryptophan is noted, however, the reference is silent with respect to this characteristic but does disclose that the strain is a mutant of the identical genus species of the instant claims and possesses the identical properties as claimed. Therefore, the resistance of the strain to 5-fluorotryptophan is considered to be an inherent property of the disclosed strain because of its superior productivity of 5'-xanthyllic acid. Both the claimed microorganism and the disclosed microorganism possess the critical property of producing 5'-xanthyllic acid and Applicants have not shown that the disclosed strain is not resistant to 5-fluorotryptophan.

Furthermore, the argument that the present invention is obtained using different process steps is noted, however, the claims do not require these steps per se and can, therefore, encompass the disclosed process steps for obtaining the identical mutant

strain. The factual evidence is that the same mutagens are used to produced the same mutant strain from the same and identical microorganism; hence the inherent feature of the strain's resistance to 5-fluorotryptophan necessarily flows from the teachings of the art. If the teachings of KR specifically disclosed in its embodiments the resistance to 5-fluorotryptophan and hence was not silent with respect to this feature then any reliance upon inherency would not be necessary. The rejection is, therefore, sustained.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

The remaining references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBBIE K. WARE whose telephone number is (571)272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DKW/
Deborah K. Ware
Examiner
Art Unit 1651

/David M. Naff/
Primary Examiner, Art Unit 1657